IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No. 29 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA

HON'BLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF WEALTH-TAX - Applicant(s)
Versus
S. D. JADEJA - Respondent(s)

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Appearance :
MR M.R. BHATT for Petitioner No(s).: 1.
NOTICE SERVED for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date : 10/08/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question under Section 27(3) of the Wealth Tax Act,1957 (the Act) at the instance of the Commissioner of Wealth Tax, Rajkot.

> *"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is right in law in holding that two buildings, one known as Muff Villa and the other as Queen Villa which was used for office purpose, constituted a house belonging to the assessee and exclusively used by him for residential purpose within the meaning of section 7(4) of the W.T.Act,1957?"*

2 The Assessment Years are 1976-77 and 1977-78. The relevant valuation dates are 31.3.1976 and 31.3.1977 respectively. In the return of net wealth filed on 7.2.1981 the benefit of valuation in

respect of self occupied house property was claimed by the assessee only in respect of Muff Villa, Jammnagar. During the course of assessment proceedings the said claim was revised vide letter dated 25/3/1982 and the assessee claimed that the self occupied property consisted of Muff Villa & Queen Villa together. The Wealth Tax Officer rejected the claim as an afterthought. He further held that both the house properties were quite distinct and separate and they had been treated separately all along as per the past record of the assesee. Therefore, on the basis of the Proviso to section 7(4) of the Act the Assessing Officer restricted the benefit only in respect of Muff Villa.

3 The assessee carried the matter in appeal before Commissioner of Wealth Tax (Appeals), who vide his order dated 3/12/1984 upheld the orders of the Assessing Officer on the ground that the point had also been considered in earlier years and the plea of the assessee had been rejected.

4 The assessee carried the matter in Second Appeal before the Tribunal and the Tribunal vide its order dated 14/12/1989 upheld the contention of the assessee. The Tribunal has taken cognizance of the fact that the assessee comes from the princely family of the erstwhile ruler of the State of Jamnagar and hence, use of several residential units existing in a common compound and extended over vast area of land by such families as their residence cannot be viewed as an unusual mode of living. The Tribunal further held that : *"It is not challenged that the two building known as Muff Villa and Queen Villa are quite contiguous and exist in one compound within common boundaries".* Referring to the report of the Departmental Valuation Officer it is stated that the same does not rule out possibility of unity of structure and construction of the two buildings. It is further held that on consideration of the report and the observations therein that both the buildings were constructed at the same time and were self occupied properties of the owner supports

the contention of the assessee. It is further found by the Tribunal that the two buildings comprise of garages and servant quarters and while Muff Villa was used by the assessee for his residence, Queen Villa was used for office purpose. On these facts, the Tribunal has upheld the claim of the assessee that the two properties are required to be valued under section 7(4) of the Act as the said properties comprise of one self occupied house of the assessee.

5. Mr.M.R.Bhatt, learned Standing Counsel appearing on behalf of the applicant-revenue submitted that the Tribunal had erred in recording various findings regarding the properties in question. That as held by the Assessing Officer and CWT (Appeals) both the buildings were separate and distinct. More importantly past records revealed, as recorded by both the Assessing Officer and CWT (Appeals), that the assessee had made claim only in respect of Muff Villa and the assessments had been framed accordingly. Emphasizing the fact that the claim was an afterthought in the year under consideration,

it was submitted that in the original returns of wealth claim regarding Queen Villa has not been made, but the claim was made subsequently by a letter. He therefore urged that the Tribunal had erred in law in holding that the two properties constituted one single self occupied property.

6. Inviting attention to provisions of section 7(4) of the Act, it was submitted that the language employed by the provision was plain and unambiguous and any use of the property for a purpose other than residential would disentitle the assessee from successfully claiming benefit of the provision. That Queen Villa was used for the office purpose as found by the Tribunal and therefore even on this count the Tribunal's order was incorrect.

7. In so far as the preliminary contention is concerned, suffice it to state that the same was urged before the Tribunal but the Tribunal has proceeded to decide the issue on merits. Hence, the rejection of the claim on the basis of past

records has not been accepted by the Tribunal. That is the only inference, one can state, in absence of any specific challenge by way of a question to the effect that the Tribunal had failed to deal with the said aspect of the controversy.

8. The law on the subject is well settled and bears no repetition. This Court in the case of Commissioner of Wealth Tax Vs. Anilkumar M.Virani (2002) 258 ITR 81 was required to resolve the controversy in relation to the same provision viz., section 7(4) of the Act, in a case where the assessee was a non resident and the house property was not occupied by the said assessee for the whole year i.e., entire period of twelve months. This Court held that the expression “exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date”, if construed in a narrow manner, would lead to an absurd situation expecting the assessee to remain in actual

physical occupation throughout the year. It was further held that “Use of a house for residential purpose does not require compulsory residence in that house and it only requires that the house should be exclusively reserved and available for the residential purposes of the assessee all the time”. According to the ratio laid down in the aforesaid decision of this Court the material aspect of the matter is that the assessee has the intention to remain in that house and not to give it up. Referring to earlier decision in case of CWT Vs. Doraisamy (1995) 215 ITR 853 it is held that “exclusively used for residential purposes” means that the assessee has the intention or animus manendi to live in the house, and further that no interest is created in the said property in favour of any other person. In other words, there is no element of right of any other person in the house property.

8.1 In the case of CWT vs. B.M.Bhandari (1980) 123 ITR 554, the Andhra Pradesh High Court while

dealing with the expression “exclusively used by him for residential purposes” occurring in section 5(1)(iv) of the Act held that the expression “exclusively used by the assessee for residential purposes” must be construed pragmatically, fairly and reasonably and not in a pedantic sense or impracticably. In other words, even if the assessee does not use house himself, it would be sufficient compliance with the requirement of the provision if the house is not let out on rent or allowed to be used for commercial purposes. It was held that what was material was constructive possession and occupation of the house property so as to enable the assessee to use the same as and when the assessee desired to do so.

8.2.In the case of Commissioner of Wealth Tax Vs. Mrs.Avtar Mohan Singh (1972) 83 ITR 52 the Delhi High Court held that the words “ for residential purposes” are contrasted with non-residential purposes such as commercial purposes, and further the words mean that the house is used by the

assessee solely as residence and not with a view to making any income or profit from it. Any use of the house to earn an income would take the property outside the meaning of the phrase residential purposes.

8.3 In a slightly different situation the Allahabad High Court was called upon to decide in the case of Shiv Narain Chaudhari Vs. Commissioner of Wealth Tax (1977) 108 ITR 104 as to what would constitute one house used for residential purposes. It was held that several self contained dwelling units which are contiguous and situate in the same compound and within common boundaries and having unity of structure could be regarded as one house.

8.4 Full Bench of Madras High Court in the case of Commissioner of Wealth Tax Vs. Smt.Muthu Zulaikha (2000) 245 ITR 800 has laid down that the contention of Revenue that the words “exclusively used” should be read as solely for residential purposes is not acceptable. The right of the property alone will play

a prominent role and not the exclusive use. That the phrase “exclusively used” should be read to mean that the house should be used for residential purposes meaning thereby it should not be let out for rent or given on licence or used for commercial purposes.

9 The legal position is therefore settled and there is a consensus of opinion amongst various High Courts as to the meaning to be assigned to the expression “exclusively used by him for residential purposes” to mean the property should not be put to any non-residential use. In other words, the property should not be exploited to generate income therefrom. In the present case admittedly that is not even the case of the revenue, that Queen Villa which is used by the assessee for office purposes is put to any commercial use to earn income.

10 Therefore, once the Tribunal has found on facts, and there is no challenge to the said finding that the two buildings are contiguous, existed in one

compound and within common boundaries, in absence of any finding that either of the building is used for non-residential purpose i.e commercial purpose, no infirmity can be found in the order of the Tribunal, when it holds that both the buildings constituted a house belonging to the assessee and exclusively used by him for residential purpose within meaning of section 7(4) of the Act.

10 The question is therefore answered in the affirmative i.e. in favour of the assessee and against the revenue.

11 The reference stands disposed of accordingly.

(D.A.Mehta, J) (H.N.Devani, J)

m.m.bhatt